

**Briefing Paper**  
Energy Answers Waste to Energy Project  
Arecibo, Puerto Rico  
April 20, 2018

**Recent Development: (From January 2018 to April 2018)**

- On 1/8/2018, a press release from the Financial Oversight and Management Board for Puerto Rico (created by Congress under the Puerto Rico Oversight, Management and Economic Stability Act ("PROMESA")) announced the beginning of a 30-day public comment period for 4 energy projects (included Energy Answers) being submitted through the Critical Projects Process and considered by the Revitalization Coordinator. This public comment period ended on 2/6/2018.
- On 2/6/2018, FEMA hosted a meeting on the "Electric Power Sector Recovery" of Puerto Rico in our CEPD office. Participants included officials from the various department in the Commonwealth government, the U.S. Dept. of Energy, and Corps of Engineers.
- On 2/10/2018, the Governor of Puerto Rico announced that due to a new transformation plan for the Puerto Rico Electric Power Authority (PREPA), the Energy Answers project in Arecibo is no longer part of the government's public policy. It should be noted that EPA is not a party establishing energy policies for Puerto Rico.
- On April 13, 2018, Hannah Chang of Earthjustice sent another letter to John Filippelli requesting that EPA makes a determination that Energy Answers failed to commence construction by September 10, 2017.

Draft language for responding to EarthJustice's April 13, 2018 letter:

We are in receipt of your letter dated April 13, 2018 in which you seek clarity regarding the status of Energy Answers' PSD permit. [REDACTED]

[REDACTED]  
[REDACTED]  
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[REDACTED]  
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**Background: (From February 2011 – October 2017)**

- On 2/8/2011, EPA Region 2 received from Energy Answers Arecibo, LLC (EA) an application for a Clean Air Act Prevention of Significant Deterioration (PSD) permit for the construction of a waste to energy facility (a "renewable energy project") in Arecibo, Puerto Rico. The application was deemed complete on 10/31/2011.

- On 6/11/2013, EPA Region 2 issued the PSD permit to Energy Answers after an extended and controversial public review period during which EPA received 1,100 written comment letters from 3,280 commenters (citizens and environmental groups) and held 6 public hearings (where 90 verbal comments were presented) on the draft permit.
- In July 2013, the PSD permit was appealed to the EPA's Environmental Appeals Board (EAB) by five petitioners. The petitions were denied by the EAB, and the EAB granted EPA's motion for a voluntary remand to incorporate biogenic emissions into the permit.<sup>1</sup>
- On 4/10/2014, EPA Region 2 issued a revised PSD permit that included revised conditions on biogenic emissions. This permit superseded the June 11, 2013 final permit.
- On 7/26/2015, EA requested an extension of its PSD permit to commence construction<sup>2</sup> because it was unable to do so by October 10, 2015, the 18-month construction deadline imposed by 40 CFR §52.21 (r)(2).<sup>3</sup>
- On 10/1/15, EPA extended the PSD permit for an additional 18-month period to April 10, 2017.<sup>4</sup> No re-analysis of the permit terms was required.
- Before the 5-month extension request was received from EA, letters opposing a 2<sup>nd</sup> extension to the PSD permit were received from Earthjustice dated 2/10/2017 and Congressman Luis Gutierrez (4<sup>th</sup> District of Illinois) dated 3/2/2017.
- On 3/21/2017, EA submitted a request for a 5-month extension to its PSD permit.
- On April 11, 2017, EPA extended the PSD permit from April 10, 2017 to September 10, 2017. Pursuant to EPA policy, a request for a second extension, in most cases, requires a substantive reanalysis and public review. However, EPA did not require the reanalysis and public review because of EA's abbreviated 5-month request, EA's expectation of imminent activity at the site and specific milestones provided by EA toward commencing construction within a relatively short time-span.

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<sup>1</sup> The EAB upheld the permit on all grounds except for the challenge related to regulating biogenic emissions. Region 2 filed a motion for voluntary remand and revised the permit to readdress biogenic emissions and issued the 4/10/2014 revised PSD permit.

<sup>2</sup> "Commence" is defined by 40 CFR §52.21(b) as either (1) beginning actual on-site construction (*Prong 1*); or (2) entering into "binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time" (*Prong 2*). In addition, the permittee must have all necessary air quality permits issued under federal law and the applicable State Implementation Plan.

<sup>3</sup> The PSD regulation provides that a PSD permit becomes invalid if construction is not commenced within 18 months after permit issuance. 40 CFR §52.21(r)(2).

<sup>4</sup> Region 2 relied on EPA's Memorandum dated January 31, 2014, titled "Guidance on Extension of Prevention of Significant Deterioration (PSD) Permits under 40 CFR §52.21 (r)(2)" ("Extension Memorandum") in making its decision.

- In May 2017, EA provided the following construction schedule for the project:
  - 03/31/2017 – EPA/Turnkey Contract Executed
  - 04/07/2017 – Commencement of Phase I Work (FEMA Onsite work and test pile)
  - 04/14/2017 – RUS ROD Issued
  - 06/16/2017 – FEMA CLOMR Issued
  - 07/14/2017 – RUS Loan Commitment Letter Issued
  - 07/21/2017 – Commencement of Phase II Work (Fill & Foundation Work)
  - 07/28/2017 – EPA Notification of Construction Start
- In June 2017, EA reported that due to protesters preventing workers from leaving the project site, on site work was halt.<sup>5</sup> As a result, EA missed the 04/07/2017 milestone. EA also reported that due to the increasing economic instability in Puerto Rico, RUS informed EA that a loan will not be issued for the project. EA has missed the 04/14/2017, 07/14/2017 and 07/21/2017 milestones. EA planned to explore a capital market/bond as a financing alternative to the RUS loan.
- In July 2017, EA reported that PREPA's 7/2/2017 filing for restructuring under the Title III, bankruptcy-like, proceedings under the PROMESA may improve the security of EA's contracts with PREPA<sup>6</sup> and therefore may improve its status for the RUS loan. EA planned to work with the PR government and PROMESA to communicate this information to RUS.
- On 8/22/2017, Earthjustice and Amigos del Rio Guaynabo, Inc. sent a letter to CASD Director John Filippelli informing EPA that no construction was taking place at the EA site, that EA had not obtained all necessary permits for construction to begin, and that any request from EA for a 3<sup>rd</sup> extension be shared with them.
- On 8/28/2017, EA informed EPA by phone that it continued to seek financing with RUS and the capital market in parallel and was working with the police to ensure safety of the workers. Based on the information provided in EA's August 30, 2017 letter, it appeared to EPA [REDACTED] [REDACTED]
- On 9/10/2017, EA submitted a letter notifying EPA that it had commenced construction. EA stated in the letter that it entered into a binding contract with SNC-Lavalin Puerto Rico, Inc. in the form of a Turnkey Construction Agreement to undertake the construction of the EA project within a construction schedule of about 42 months. [REDACTED] [REDACTED] EA did not provide documentation supporting its conclusion.

<sup>5</sup> Test pile work had started but was stopped out of safety concerns for workers. Incidents of workers being prevented from leaving the EA construction site at the end of the workday have occurred over several occasions. The permits required for the test pile work expired and EA was in the process of obtaining new permits.

<sup>6</sup> PREPA is the primary customer for the electricity generated from the Arecibo project.

- On 9/13/2017, CAMBIO submitted a letter to Acting Regional Administrator providing its view of the accuracy of the information presented in EA's 9/10/2017 notification.
- On 9/14/2017, Earthjustice and Amigos del Rio Guaynabo, Inc. submitted a letter to John Filippelli rebutting the accuracy of the information presented in EA's 9/10/2017 notification. Earthjustice also asked EPA to obtain documentation to confirm EA's claim that it commenced construction and requested a determination from EPA on whether construction commenced by 9/10/17. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- On 9/27/2017, Earthjustice and Amigos del Rio Guaynabo, Inc. submitted another letter to John Filippelli providing additional information to further support its views that EA has not commenced construction as discussed in its 9/14/2017 letter.
- On 10/10/2017, Hannah Chang of Earthjustice called CASD Deputy Director Ariel Iglesias to discuss about Earthjustice's 09/27/2017 letter. Joe Siegel of ORC called her back and informed her that we are not sure whether, when or how we might respond to her two letters given the transition in Region 2 and the focus on the hurricane aftermath in Puerto Rico. She is free to check back in a month or so.
- Hannah Chang of Earthjustice has contacted us several times since October 2017 to ask about when Region 2 will make a determination on whether Energy Answers has "commenced construction." Our responses were that the Region was not certain whether or when that will take place and that we are under no obligation to make such a determination nor have we made one in the past.



Potential Q and A



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